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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,316	02/24/2004	David Berghash	20705.0 (Berghash)	9662
1342	7590	05/16/2005	EXAMINER	
PHILLIPS LYTTLE LLP INTELLECTUAL PROPERTY GROUP 3400 HSBC CENTER BUFFALO, NY 14203-3509			GRAHAM, MARK S	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,316

Applicant(s)

BERGHASH, DAVID

Examiner

Mark S. Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12, 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Applicant's election without traverse of the hockey stick in the reply filed on 4/29/05 is acknowledged.

Claims 11, 12, 23, and 24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/29/05.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 and 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christian in view of Tucker, Sr. (Tucker).

Christian discloses the claimed device with the exception of the ribs. However, as disclosed by Tucker it is known in the art to provide such shafts with ribs having a greater coefficient of friction for handling purposes. It would have been obvious to one of ordinary skill in the art to have provided such on Christian's stick for the same reason. Regarding the "coextruded" limitations, such are considered product-by-process steps and are thus met by virtue of the claimed article itself being obviated.

Concerning claims 3 and 15, Christian discloses that the shaft may be made of plastic generally. The plastics claimed by applicant are commonly known and suitable for Christian's purpose and therefore would have been obvious to the ordinarily skilled artisan constructing the stick depending on what feel was desired by the player.

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Regarding claims 4 and 16, Tucker discloses that the ribs may be made of a soft, pliable deformable material. The materials claimed by applicant are commonly known and suitable for Tucker's purpose and therefore would have been obvious to the ordinarily skilled artisan constructing the stick depending on what feel was desired by the player.

Horwood et al., Gibbons, Bassett, and Lin have been cited for interest because they disclose similar devices.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
5/11/05



Mark S. Graham
Primary Examiner
Art Unit 3711